

The BiT Commons response to Ofcom's consultation on Implementing the Broadband Universal Service Obligation (B-USO), Consultation on designation regulations.

The BiT Commons is grateful for the opportunity to respond to this consultation. The BiT Commons has some concern that Ofcom by breaking down the task of implementing the B-USO will avoid how the B-USO is to align with existing BDUK activity, BDUKs budgets and large sums now owed by BT¹. This is potentially very damaging for rural communities, as the B-USO could be used to terminate prematurely lines of funding intended to deliver more than the B-USO in terms of service delivered. This would be unfair to those still waiting for upgrades and where monies exist to upgrade a further 600-700k premises to full fibre solutions. Ultimately this matter arises from the ongoing mis-use of commercial confidentiality agreements and consequential lack of transparency by BT and BDUK in both reporting and in their representations to Parliament.

Ofcom should also take some account of the events which led to the 10Mbps being specified in November 2015, and then subject to a wash up by Parliament just before the 2016 election. At that time neither the ambition nor the means of funding was informed by the scale of the emerging BT Capital Deferral, the underspends and indeed the status of BT's capital contributions for all BDUK projects. This should not go uncorrected. Rural customers should not be punished as a consequence of a process that put commercial confidentiality ahead of optimising rural connectivity upgrades.

Some means of reconciling and concluding the BDUK programme is needed before the B-USO is implemented if rural connectivity is not to suffer. The BT B-USO submission to Ofcom states its 4G wireless antenna cannot be subsequently overbuilt with subsidy. This is not how the future of rural connectivity should be decided.

It is noticeable that neither BT's B-USO offer nor Ofcom analysis makes a serious effort of reconciling the outstanding BDUK activity. The status and role of Fibre on Demand specifically needs to be acknowledged before BT is to be designated a B-USO provider. Ofcom should also seek to properly define the 'reasonable demand' for full fibre services.

Ofcom raise a single question in this consultation;

Question 1: Do you agree with our proposed approach to designating a Universal Service Provider?

In the simplistic manner in which Ofcom have set themselves this task, then the designation has a certain rationale to it. However, the devil is in the detail. What is the designation to include? What pre-conditions are to be met before a designation becomes active in an area?

The BiT Commons suggests that under section 1.2 or section 1.3 that minimum B-USO should not take place until BDUK/LA activity is formally concluded for that area. Such a change would not have any practical impact on the consumer as BT's resource constraints apply equally to BDUK and B-USO activity. There should be amendments to allow for the exhaustion of funds intended for rural upgrades and support for products which aid fibre extensions. These include;

- 1) The re-use of all clawback,
- 2) underspends and

¹ BT q4 results, 2017-18 results record a Capital Deferral of £536m. This report by Vodafone highlight the need to verify a £480m contribution by BT to allowable costs in the BDUK activity. No public record of these payments exist.

- 3) Outstanding contacted activity – est. £300m from the £1.7bn available.
- 4) Balances in investment accounts held LA, which is likely to hold the BT Capital Contribution owed but not used in planning the rural upgrades. BT has made references to some £480m in capital contributions to allowable costs in addition to the 10 years of operational costs which are counted in public relations statements.
- 5) The formal launch of a Fibre on Demand (FoD) service including a means to aggregate customer demand and support by BT Retail of such a service. FoD in this case is the extension of a 'native' FTTP service using an estimated 40,000 subsidised fibre paths established using £1.2bn of subsidies so far spent.
- 6) Ofcom to support FoD by adjusting the WLA product definition to further define 'reasonable demand' for FTTP by highlighting that the appropriate existing point of service origin is not the exchange but any location where BT can establish a fibre path by deploying a splitter or secondary splitter. This includes the use of spare subsidised fibres in cables used to connect FTTC cabinets in rural areas.

It is more than likely that these BDUK/LA funds arise from very budgets created in 2011-12 by BDUK to conduct FTTP in-fill in locations where BT's cabinet solution would not work. 'Cigarette' packet calculations at the time assumed some 30,000 cabinets needing £20-£25k subsidy with the remaining funds –(about £1bn) set aside for in-fill. Thus formalising a Fibre on Demand is no more than a catch-up. The limits on FoD can include the £3,400 per customer B-USO budget should that be needed. Use of the Capital Deferral, if it is to continue resting in BT's accounts should be discussed as a possible contribution B-USO fund.

The notion of a fibre path facility has been submitted previously to Ofcom for peer review in previous consultations. It describes in some detail how such a service can be applied in Northern Ireland and used to bridge the outstanding £150m procurement and the proposed B-USO. It uses the metaphor of a Fibre Path Facility, as opposed to a Metal Path Facility (a copper line) to outline what is possible. The proposal is consistent with publicly made promises to support fibre extensions made by BT since 2014. The latter arose from fibre extension requirements written by the author for BDUK in 2011. The notion of a demand led Fibre Path Facility was first submitted to Ofcom, BDUK and BT in 2016. The outstanding BDUK funding of over £1bn for rural would fund approximately 600-700k connections.

This approach could be also applied to Scotland's R100 project or the back end of that project and to the substantial outstanding work in Wales. This should allow one more round of activity in each rural English county. BDUK may need to re-distribute their share of the clawback funding from urban areas to more rural areas. If required this should include any reconciliation arising from the 1.1m premise overbuild of Virginmedia.

The denial of FTTP to SME customers in business parks has been partially documented and submitted previously to Ofcom. These examples are principally victims of BT's Group decision in 2012 to game its costs and capital contributions to BDUK/LA throughout the phases of the BDUK programme. This occurred at the expense of BT's own engineering division Openreach. Ofcom are in danger of being complicit in this process by their decision to consistently ignore the behaviours that permit such sub-optimal customer outcomes. This matter was avoided in WBA product review by restricting the modelling in the Fair Bet Analysis to the first £1bn of commercial investment. A decision now to reconcile BDUK activity prior to the B-USO taking an effect would greatly improve coverage outcomes and

reduce the reliance on the proposed B-USO industry fund. More detail on BDUK funding is available to Ofcom under issue number 00557595.

I hope this is helpful to your purpose.

Mike Kiely, Founder
The BiT Commons, Oct 2018